

SERVICE DATE - SEPTEMBER 3, 2003

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34076

LOS ANGELES TO PASADENA BLUE LINE CONSTRUCTION AUTHORITY  
D/B/A LOS ANGELES TO PASADENA METRO CONSTRUCTION AUTHORITY  
–ACQUISITION EXEMPTION–LOS ANGELES COUNTY METROPOLITAN  
TRANSPORTATION AUTHORITY

Decided: August 28, 2003

On June 24, 2003, the Los Angeles to Pasadena Blue Line Construction Authority d/b/a Los Angeles to Pasadena Metro Construction Authority (Authority),<sup>1</sup> a noncarrier, filed a notice of exemption under 49 CFR 1150.31<sup>2</sup> to acquire a rail line from the Los Angeles County Metropolitan Transportation Authority (LACMTA).<sup>3</sup> The line consists of 20.0 miles of rail line between milepost 104.2 and milepost 124.2 on the Pasadena Subdivision of The Burlington Northern and Santa Fe Railway Company (BNSF), in Los Angeles County, CA. Authority simultaneously filed a motion to dismiss the notice, asserting that the transaction should not be subject to Board jurisdiction because Authority will not become a common carrier as a result of the transaction. There is no opposition to the motion. The motion to dismiss will be granted.

BACKGROUND

Authority is acquiring the physical assets only of the rail line, including the real property assets and track structures, from LACMTA to complete a project that was envisioned by LACTC when it first acquired the line, but was not finished. The project involves the construction of an extension of the light rail line (the Gold Line) from Los Angeles Union Station to Pasadena, with the possibility of continuing the line further east at some point in the future to the City of Claremont. Authority states that the construction of the light rail line will not interfere in any way with freight or commuter rail operations that may remain on the line once the construction is completed. Authority states that it will not acquire

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<sup>1</sup> Authority is a public agency existing under the authority of the laws of the State of California.

<sup>2</sup> Notice of the filing was served and published in the Federal Register on July 22, 2003, (68 FR 43422).

<sup>3</sup> LACMTA is the successor in interest to the former Los Angeles County Transportation Commission (LACTC).

any rights or obligations to conduct or provide freight or commuter rail operations on the line, and that those operations will be conducted or otherwise provided by third parties.<sup>4</sup> Pursuant to the deeds by which Authority acquired these assets and which are attached to Authority's notice of exemption as Exhibits A-1, A-2, and A-3, the transfer of the assets is subject to the following rights: (1) the Reserved Rail Freight Easement and the Reserved Rail Freight Licenses; and (2) the Shared Use Agreement between a predecessor railroad of BNSF and LACTC dated October 30, 1992. Under the terms of those agreements, BNSF holds the rail freight easement and obligation on the line, and BNSF's freight service right and obligation is exclusive. The deeds provide that LACMTA has retained all rights that are needed for BNSF to retain a permanent and exclusive easement to conduct freight operations, and for SCRRA or Metrolink, pursuant to a contract with LACMTA, to conduct commuter operations on any portion of the rail line. LACMTA retains the obligation to maintain and dispatch the line.

Authority states that it will not hold itself out to provide or conduct freight or commuter rail operations and that the transaction does not require Board authorization. In support, Authority cites the following cases: Metro-North Commuter Railroad Company–Acquisition and Operation Exemption–Line of Norfolk Southern Railway and Pennsylvania Lines LLC, STB Finance Docket No. 34293 (STB served May 13, 2003); State of Texas (Acting By and Through the Texas Department of Transportation)–Acquisition Exemption–West Texas & Lubbock Railroad Company, Inc., STB Finance Docket No. 33889 (STB served Mar. 6, 2001); Utah Transit Authority–Acquisition Exemption–Line of Union Pacific Railroad Company, Finance Docket No. 32186 (ICC served Dec. 31, 1992); and Maine, DOT–Acq. Exemption, ME Central R. Co., 8 I.C.C.2d at 835 (1991) (State of Maine).

## DISCUSSION AND CONCLUSIONS

The question here is whether the Board's regulatory approval is required for Authority to acquire the physical assets of the rail line. The acquisition of an active rail line and the common carrier obligation that goes with it ordinarily requires Board approval under 49 U.S.C. 10901, if the acquiring entity is a noncarrier, including a state. See Common Carrier Status of States, State Agencies, 363 I.C.C. 132, 133 (1980), aff'd sub nom. Simmons v. ICC, 697 F.2d 326 (D.C. Cir. 1982). The Board's authorization is not required, however, when the common carrier rights and obligations that attach to the line will not be transferred. See State of Maine, 8 I.C.C.2d at 836-37.

The record shows that LACMTA is not transferring common carrier rights or obligations to Authority and that Authority will not hold itself out as a common carrier performing freight rail

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<sup>4</sup> BNSF will conduct freight common operations and Southern California Regional Rail Authority (SCRRA or Metrolink) will conduct commuter operations.

operations. Rather, LACMTA will continue to have all of the common carrier rights and obligations it initially acquired, BNSF will continue to have the same rights to provide rail freight service, and SCRRA or Metrolink, pursuant to a contract with LACMTA, will continue to provide commuter rail operations on the line. Because Authority will acquire only the physical assets on the rail line, Authority will not become a rail carrier subject to the Board's jurisdiction as a result of the transaction. Under these circumstances, this transaction does not require Board action, and the Board will not exercise jurisdiction over it. Accordingly, Authority's notice of exemption will be dismissed and this proceeding will be discontinued.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Authority's motion to dismiss the verified notice of exemption in this proceeding is granted.
2. The proceeding is discontinued.
3. This decision is effective on its date of service.

By the Board, Chairman Nober.

Vernon A. Williams  
Secretary